

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

WP(C).No. 16325 of 2007(R)

AS.336/2005 of II ADDL.DISTRICT COURT,ERNAKULAM
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PETITIONERS:

1. C.D.PREMLAL, AGED 47 YEARS,
S/O.DAMODARAN, RESIDING AT CHAKKEPILLIL HOUSE,
ELAMAKKARA, KOCHI-26.
2. C.K.RAVEENDRAN, AGED 52 YEARS,
S/O.CHAPPALAKRISHNAN, RESIDING AT NARAKKAL
MURI, NARAKKAL VILLAGE, KOCHI TALUK.

BY ADV. SRI.K.B.SURESH

RESPONDENT:

SANTHOSHKUMAR, AGED 47 YEARS,
S/O.VASU, RESIDING AT KALAMANGALAM THUNDIYIL
HOUSE, PACHALAM, KOCHI-12.

BY ADV. SRI.C.K.PAVITHRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.N.KRISHNAN,J
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W.P.(C).No.16325 of 2007
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Dated this the 14th day of June, 2007

JUDGMENT

This writ petition is filed seeking to quash the order passed in I.A.No.663 of 2007 in A.S.No.336 of 2005 of the IInd Additional District Judge, Ernakulam. The appeal arise out of the judgment and decree passed by the Munsiff, Ernakulam in O.S.1726 of 1998. The plaintiff has instituted a suit to set aside the document No. 477 of 1985 on the ground that he has not executed such a document at all and therefore it is liable to be set aside. The parties after understanding the rival contentions had adduced evidence before the trial court. The disputed document was produced by the defendant before the court and at his instance it was referred to the hand writing expert as well as the Finger print experts and reports were obtained. Thereafter the experts were examined and cross-examined. The experts' opined that the signature is not that of the plaintiff and similarly that the thumb impression also cannot be of that of the plaintiff. The court thereafter proceeded and decreed the suit. It is against that decision the appeal has been preferred. During

the pendency of the appeal the learned counsel for the plaintiff in the suit filed an application to mark the document No. 477/85 and the court permitted the document to be marked as Ext.A6. The learned counsel for the writ petitioner would contend that it should not have been received in evidence and even if it is received as an evidence he should have been given an opportunity to cross-examine the witness on Ext.A6. The learned counsel had also pointed out the relevant provisions of Order 41 Rules 27, 28 and 29. Order 41 Rule 27 deals with a situation regarding reception of additional document in evidence at the appellate stage. It is settled position that unless the party is deprived from producing the documents in spite of due diligence, which is relevant for the case, the court cannot receive that document. So far as, this case is concerned, the subject matter of the suit has been very same document, that document had been sent for expert opinion. Parties have tendered evidence regarding this document and examined the experts also. But unfortunately the learned Munsiff did not mark that document. It is not a fresh form of evidence but it is the basic document on which the defendant relies and it was the point

that had been considered by the Munsiff. When the execution of the documents is denied and it is sought to be set aside and the document produced is sent for expert opinion just because the Munsiff has forgotten to give it a marking it should not be classified as an additional piece of evidence. Therefore, the order passed by the learned District Judge marking Ext.A6 does not call for interference. At the same time I may like to point out that if the present writ petitioner has got the grievance that he has not been given sufficient opportunity to put forth his case before the trial court it is for him to make a request to the Appellate Court to give him an opportunity and it is for that court to consider.

Writ petition is dismissed accordingly.

M.N.KRISHNAN,JUDGE

dvs